



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Waste Management Board
Virginia Administrative Code (VAC) citation	9VAC20-60
Regulation title	Virginia Hazardous Waste Management Regulations
Action title	9VAC20-60 Amendment 18 – Mercury-Containing Lamp Crushing
Date this document prepared	02/06/2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Virginia Hazardous Waste Management Regulations, 9 VAC 20-60, provide requirements for the effective management of hazardous waste in the Commonwealth, including the management of hazardous waste that has been deemed universal waste such as mercury-containing lamps. This proposed amendment is intended to revise the current management requirements and add additional criteria for mercury-containing universal waste lamps.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your identification should include (i) a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary.

Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board (Board) to issue regulations as may be necessary to carry out its powers and duties required by the Virginia Waste Management Act (Act). Virginia code §10.1-1402(11) states:

“The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.”

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Virginia Hazardous Waste Management Regulations protect the public health, safety and welfare from harmful results of the mismanagement of hazardous waste by establishing requirements for the effective monitoring of the generation, transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth and these regulations include requirements for universal wastes. The purpose of the universal waste regulations is to streamline and encourage recycling. However, the federal universal waste regulations do not allow crushing of mercury-containing lamps but states can demonstrate equivalency. Virginia’s regulations for universal waste mercury-containing lamps were proposed to be approved by EPA in 2003 but EPA later withdrew that proposal due to the adverse comments received. As a result, Virginia’s regulations currently do not operate in lieu of the Federal requirements. EPA has recommended that Virginia amend its universal waste regulations for mercury-containing lamps in order for the Commonwealth to receive EPA authorization for the mercury-containing lamp universal waste program. By this amendment, we are seeking to do so. A stakeholder meeting was held on May 18, 2011, to discuss the issues raised, to obtain feedback on lamp crushing operations currently used and on the current regulations. Many stakeholders were concerned that Virginia was not authorized for this program and that EPA’s authorization is necessary in order to insure that Virginia’s businesses do not find themselves in a difficult situation of being in compliance with state regulations but not federal requirements, as the state regulations are not authorized in lieu of the federal requirements. This amendment, and hopefully, subsequent authorization will eliminate that potentially problematic issue.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

As noted above, in order to obtain the necessary authorization for implementation of the universal waste program for mercury-containing lamps, this amendment will address the following as part of this regulatory action:

- A. Storage criteria for owners or operators of facilities that store mercury-containing lamps prior to recycling and for owners or operators of facilities that recycle mercury-containing lamps without storing prior to recycling;
- B. Requirements for mercury-containing lamp recycling facilities including testing, operational, closure and recordkeeping criteria, and if applicable, financial assurance requirements; and,
- C. Requirements for small and large quantity handlers and destination facilities that manage mercury containing lamps will be clarified and additional requirements addressed.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

One alternative is to not amend the regulations and allow Virginia Businesses to determine how best to adhere to both the state and federal requirements, which differ on bulb crushing. Revising the regulations

will reduce the confusion by allowing Virginia to seek EPA authorization for its bulb crushing requirements. Crushing will allow Virginia businesses more flexibility in managing their mercury-containing lamp bulbs.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, 3) potential impacts of the regulation, and 4) impacts of the regulation on farm and forest land preservation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so by mail, email, or fax to Debra Miller, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218; phone: 804-698-4206; fax: 804-698-4346; or, email: Debra.Miller@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Public hearing at proposed stage

A public hearing will not be held after publication of the proposed stage of the regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

Regulatory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

The Board does not intend to establish a panel to assist in the development of the proposal. However, in response to requests received during the NOIRA public comment period the Board will consider establishing a panel. Persons requesting the agency use a panel and interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address, and their organization (if any). Notification of the composition of the panel will be sent to all applicants.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights

of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The Department does not expect that the regulation will have a direct impact on the institution of the family and family stability.

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

EPA – the Environmental Protection Agency
NOIRA – Notice of Intended Regulatory Action